

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

-----X
AGUDATH ISRAEL OF AMERICA, : **Civil Action No. 3:17-cv-**
and WR PROPERTY LLC, : **03226-MAS-DEA**
Plaintiffs, :
v. :
TOWNSHIP OF JACKSON, NEW :
JERSEY, :
Defendant. :
-----X

DONNA M. JENNINGS, ESQ., of full age, under penalty of perjury, declares as follows:

1. I am a shareholder at Wilentz Goldman & Spitzer, P.A., counsel for Plaintiff WR Property, LLC in this litigation. I submit this Declaration in further support of Plaintiffs' Notice of Supplemental Authority,
2. A copy of the February 17, 2017 transcript of motion in the matter of Oros Bais Yaakov High School v. The Zoning Board of Adjustment of Jackson and Township of Jackson, Superior Court of New Jersey, Ocean County, Law Division, Docket No. OCN-L-2981-14, is attached hereto as Exhibit A.
3. A copy of the Complaint filed in the United States District Court, District of New Jersey on May 20, 2020, United States of America v. The

Township of Jackson and Jackson Planning Board, No. 3:20-cv-06109, is attached hereto as Exhibit B.

4. A copy of the Case Information Statement filed in the United States District Court, District of New Jersey on May 20, 2020, United States of America v. The Township of Jackson and Jackson Planning Board, No. 3:30-cv-06109, is attached hereto as Exhibit C.

DECLARATION

I hereby declare under penalty of perjury that the foregoing statements are true and correct pursuant to 28 U.S.C. §1746.

/s/ Donna M. Jennings
DONNA M. JENNINGS

Dated: May __, 2020

EXHIBIT A

1 SUPERIOR COURT OF NEW JERSEY
2 OCEAN COUNTY - LAW DIVISION - CIVIL PART
3 DOCKET NO. OCN-PW-L-2981-14
4 A.D.# _____

5 OROS BAIS YAAKOV HIGH)
6 SCHOOL,)
7 Plaintiff,)
8 vs.)
9 THE ZONING BOARD OF)
ADJUSTMENT,)
Defendant.)
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TRANSCRIPT
OF
MOTION

PLACE: Ocean County Courthouse
120 Hooper Avenue
Toms River, New Jersey 08753

DATE: February 17, 2017

B E F O R E:

HON. MARLENE L. FORD, J.S.C.

TRANSCRIPT ORDERED BY:

DONNA M. JENNINGS, ESQUIRE (Wilentz, Goldman &
Spitzer)

A P P E A R A N C E S:

DONNA M. JENNINGS, ESQUIRE (Wilentz, Goldman &
Spitzer)

Attorney for the Plaintiff

ROBERT L. GREENE, ESQUIRE (Storzer and Associates)
Attorney for the Plaintiff

SEAN D. GERTNER, ESQUIRE
Attorney for the Defendant, Zoning Board of
Adjustment.

JEAN CIPRIANI, ESQUIRE (Gilmore & Monahan)
Attorney for the Defendant, Jackson Township

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I N D E X

	<u>ORAL ARGUMENT</u>	<u>Page</u>
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3	By: Ms. Cipriani	7
4	By: Mr. Gertner	12

DECISION

9 (NONE)

10

EXHIBITS

Ident. Evid.

13 | (NONE)

1 THE COURT: All right. This is Oros Bais
2 Yaakov High School versus Zoning Board of Adjustment
3 and the Township of Jackson.

4 And your appearances for the record, please.

5 MS. JENNINGS: Good afternoon, your Honor.
6 Donna Jennings from the law firm of Wilentz, Goldman
7 and Spitzer on behalf of the plaintiff.

8 And Robert Greene of Storzer and Associates
9 for the plaintiff.

10 MS. CIPRIANI: Jane Cipriani, law firm of
11 Gilmore and Monahan on behalf of the Township of
12 Jackson.

13 MR. GERTNER: And good afternoon, your Honor.
14 Sean Gertner on behalf of the Zoning Board.

15 THE COURT: Okay. Miss Jennings, this is
16 your motion to -- for leave to file an amended
17 complaint against the Township of Jackson. It's
18 opposed, I believe and we'll hear from you first.
19 Okay?

20 MS. JENNINGS: Great. Thank you, your Honor.
21 As indicated in my papers, and I'm not sure
22 you want me to go through everything in my papers, I'm
23 sure you've had an opportunity to review them, and it
24 looks like you had a little bit of a rough afternoon,
25 but in essence one of the first claims that --

1 THE COURT: It just looks that way because
2 you don't do family law.

3 MS. JENNINGS: Just looks that way.

4 With respect to the timeliness of the
5 application, I think both under the federal statute
6 and even under the state court rules, the application
7 filed by the plaintiffs is timely. I've set that
8 forth three different ways in the actual brief. I
9 don't know if I need to go over either of -- any of
10 those unless you would like me to.

11 Then with respect to whether or not the
12 amendment of plaintiff's complaint would be futile, I
13 also go over that. I think one of the big
14 misconceptions on the defendant's part is a
15 misunderstanding of actually what the plaintiff is
16 seeking. We are not seeking substantial relief under
17 RLUIPA. This is a discrimination claim under the
18 equal terms and the non-discrimination clauses. So
19 much that are in those briefs don't really address
20 those issues.

21 And so what we have left is we have the
22 claims with respect to the NC zoning, which we allege
23 against the township to bring the township into the
24 case.

25 With respect to the NC zoning, there also is

1 an equal terms claim and it's not the fact as argued
2 by the township, that parochial and private schools
3 are both excluded, so that's okay. You have to look
4 at what are the other non-religious assemblies that
5 are permitted within the zone. And when you look at
6 the zoning board, and there are a number of other
7 non-religious assemblies and institutions that are
8 permitted, including parks, playgrounds, libraries,
9 public schools and museums. And I cite the case with
10 respect to the equal terms provision which I won't
11 read out loud to you, but that's set forth in there as
12 well.

13 And clearly, the plaintiff's attempt to amend
14 the complaint here under RLUIPA's equal terms
15 provision should be granted. It's not going to be
16 futile. I think we should have an opportunity to
17 explore that.

18 And with respect to the R1 where all schools
19 are prohibited, we do allege enough in the complaint
20 to demonstrate that there is some type of religious
21 gerrymandering going on within the township's zoning
22 ordinance.

23 And then, finally, what I found lacking in
24 both the briefs was any sort of undue prejudice to the
25 defendants to bring them in now. It's our position

1 that the township knew or should have known that we
2 were challenging the ordinances and at one point in
3 time they would be brought into the case, but there's
4 no undue harm to them. They're going to just simply
5 have to defend the case just as if they had been
6 brought in from Day One.

7 So that's really our arguments. And unless
8 you have a specific question, your Honor, I'll rest on
9 our papers.

10 THE COURT: Okay. All right.

11 MS. CIPRIANI: Thank you, your Honor.

12 It's interesting that the suggestion that the
13 township somehow should have just known that in a case
14 where the complaint was filed, I don't know, a year or
15 so ago, more than that, that some day all of a sudden
16 that the township would be brought in. It seems that
17 there's a desire to bring the town in at this point by
18 hook or by crook in a context that -- that makes very
19 little sense at this point.

20 The two different zones that are mentioned
21 are really in different postures not only because of
22 the way that they're drafted, but because of the
23 absence of any application affecting the Neighborhood
24 Commercial zone. So to take the R1 zone first, which
25 is the zone where as I understand it, this application

1 is located and where it was made, the R1 zone does not
2 permit schools of any kind. It is not facially
3 invalid in any way. There is case law specifically
4 that says a zoning ordinance barring all schools from
5 a residential district was not discriminatory, which
6 is a Roman Catholic Dioceses Newark case.

7 So, the ordinance is fine. It's not a
8 challenge even as -- as posed by Miss Jennings just
9 now to the R1 zone and to the ordinance on that zone.

10 There's some suggestion that the overall
11 master plan or that's what I'm taking it as the
12 township evidence is some discriminatory intent.
13 These are ordinances that were an ordinance was passed
14 in 2010 implementing the 2009 Master Plan. I don't
15 think there's anything that's been suggested that
16 would be or suggest any discriminatory intent in the
17 2009 Master Plan or the implementing ordinances, which
18 are the ones that are at issue here.

19 The R1 zone ordinance doesn't provide basis
20 for challenge, but at least the R1 zone is the one
21 where the school's application -- in which the
22 school's application is based. So, the problem is the
23 application is based there, that the ordinance at
24 issue that's the zone at issue. That zoning ordinance
25 is not invalid on its face.

1 There was an application before the zoning
2 board, and I understand that your Honor is hearing
3 that part of the case, which has been going on for a
4 substantial amount of time. Under the Jackson
5 Holdings case, what happens now is the township comes
6 in, as far as I understand it, the question of the
7 ordinance validity has to go first. So all of the
8 rest of it stops in terms of the litigation aspect,
9 discovery may be something else, but in terms of going
10 forward, because then the ordinance has -- so the R1
11 ordinance, which is the one that's actually attached
12 to the application, would be somehow challenged.
13 There's nothing on the face of it. There's nothing
14 that provides for a RLUIPA claim on that ordinance.

15 If there's a suggestion of the
16 gerrymandering, gerrymandering which really makes very
17 little sense given the other uses that are permitted
18 in the other challenged ordinance, which is the
19 Neighborhood Commercial, then that would be a
20 challenge to the master plan as a whole, not to the
21 specific R1 ordinance.

22 As far as the Neighborhood Commercial zone
23 ordinance, that is, you know, it appears that the
24 plaintiff owns property or has an interest in property
25 that is located in the Neighborhood Commercial zone.

1 The Neighborhood Commercial -- but it's not at issue
2 here, the Neighborhood Commercial zone ordinance. So
3 there's nothing that would prohibit an alteration of
4 that ordinance at any time.

5 The only thing in that ordinance that is at
6 issue really is the fact that in one of the permitted
7 uses in addition to having other governmental uses has
8 public schools and as was clear in our papers and is
9 clear in the law and is clear in the Municipal Land
10 Use Law, the municipality cannot treat public schools
11 differently from private schools, and we are aware of
12 that.

13 There the -- that language, it's really the
14 rule that word would make that ordinance which
15 shouldn't even be at issue because it's not part of
16 the -- the case in chief or at least the initial case
17 into any kind of issue. There's -- that is, again, it
18 was put in place in 2010 implementing the ordinances.
19 There are other religious uses that are permitted in
20 that zone as to commercial uses -- I'm sorry,
21 conditional uses. There's nothing there that was
22 provided.

23 As far as the timeliness argument on an
24 action in lieu of prerogative writs and in challenging
25 an ordinance, there the 45 days does apply and then

1 there's this whole suggestion of bringing in the
2 RLUIPA claims, that that somehow should go back, you
3 know, the four years. Even the ordinances are valid
4 or they are not valid, but in testing the ordinance,
5 the R1 is plainly valid in its place. There is
6 nothing on the face of that ordinance standing in
7 isolation to give any rise to a RLUIPA claim. That
8 was the way it was framed as a challenge to the R1
9 zone.

10 As far as the Neighborhood Commercial zone,
11 there is no way in this, you know, this particularly
12 allows schools to the extent that we're going to look
13 at this ordinance, which is non-duplicated as part of
14 this case. I'm not saying that the plaintiffs
15 couldn't bring a challenge to the ordinance on its own
16 under -- under RLUIPA and I -- I agree.

17 The charm about public schools it's not an
18 enforceable term. Schools are permitted. Schools are
19 permitted. That's, I think really clear in the law
20 and the township definitely recognizes that, but to
21 add that in to this litigation is to not just do a
22 standalone challenge. These are in different things.
23 It's tying it all to the application that was made
24 that the zoning board heard about this school.

25 And the idea of having separate litigation on

1 the ordinance but attaching it to this case doesn't
2 make sense, because all it does is slow down the
3 application -- the litigation on the school's
4 application, which is before your Honor and has been
5 for, as I said, well over a year in order to make a
6 facial challenge and then there have been giant
7 discovery requests already served, which the township
8 declined to answer since -- until this day is done
9 depending how it goes we're not a party, but the
10 purpose of that can't change the flat language of the
11 R1 ordinance. And the time in terms of the ordinance
12 being put in place all -- the only relevant time frame
13 is 2009, 2010.

14 MR. GERTNER: Thank you, your Honor.

15 THE COURT: All right.

16 MR. GERTNER: Really just to follow-up on --
17 on my colleague's argument, the Board also recognized
18 during its hearings that with respect to the NC zone,
19 we accepted the township's position. The Board
20 accepted the township's positions and understood that
21 schools would in fact be allowed in the -- in that
22 zone.

23 But to address the equal terms provision and
24 to some extent from the -- from the Board's -- from
25 the Board's perspective, as my colleague indicated,

1 I'm going to use the term bootstrap, that if you look
2 at the initial pleadings of the plaintiff here, this
3 idea of this religious gerrymandering comes -- stems
4 from, it appears from their papers, statements that
5 the Board had no or the township had no control over.
6 And the court made it very specific findings as I set
7 forth in -- in my answer, in my reply and the cross
8 motion as well, that cross motion is not specifically
9 before you today, indicating that the court made very
10 specific findings about what the Board took into
11 account and what it did not take into account.

12 And I would respectfully argue, your Honor,
13 that the idea that the Jackson Township and its boards
14 that are there to enforce both planning and ultimately
15 the opportunity to grant the variances, the idea that
16 there's some gerrymandering going on vis-a-vis what's
17 occurring in neighborhood -- in neighborhoods that
18 surround these two zones but are not in this township,
19 really comes down to there's a slippery slope that
20 could occur. And I would like -- I would respectfully
21 suggest that the court at least think about this, that
22 we have an issue here of home rule. There is a
23 township line that has to mean something. It can't
24 mean nothing. If the -- and this court, particularly,
25 I find having served in the three branches of

1 government at certain levels, I feel understands the
2 differences in what a court should be doing. There's
3 the legislature versus the executive branch. If the
4 legislature wants municipalities and wants to lose
5 certain powers over its zoning, over their zoning, and
6 look at more regional approaches or empower county
7 planning -- planning boards to look at some
8 regional -- regional idea, it's -- there's no
9 precedent cited to allow this Board to do that -- to
10 do that.

11 The fact that this particular R1 zone abuts a
12 different municipality should have no bearing on its
13 facial -- facial validity as argued by, you know, as
14 argued by the -- by the township.

15 They also cite the -- the issue of the --
16 whether or not the school was inherently beneficial or
17 not. And they try again, plaintiff again tries to
18 gerrymander those arguments into the idea that the
19 township and the whole process was tainted by this and
20 not given the opportunity to -- for equal terms.

21 Again, your Honor, I went through in my
22 brief, I won't point it out specifically, the number
23 of times this court already made a finding that there
24 was no bias or prejudice on behalf of the Board in
25 making those -- those determinations, such that the

1 Board as a separate entity supports the municipality's
2 position that at this point in the litigation there's
3 no basis to permit this amendment, that the complaint
4 should move -- should move forward, and in fact, the
5 Board summary judgment motion be heard separately and
6 distinctly in March or wherever we -- we should set
7 that.

8 THE COURT: Okay. Miss Jennings.

9 MS. JENNINGS: Do you want me to respond or
10 no?

11 THE COURT: Yeah.

12 MS. JENNINGS: Okay. So first with respect
13 to the arguments on the NC zone, I'm a little confused
14 by -- because the NC zone specifically only permits
15 public schools and when you look at the definition
16 section in the ordinance, a public school is a
17 non-religious assembly, institutional use and they
18 have separate definitions for parochial schools. So I
19 don't understand how we can make arguments that
20 parochial schools are now permitted in the NC zone.
21 So I'm definitely confused there.

22 With respect to this bootstrapping argument,
23 I don't see what's wrong with making the arguments.
24 We have all the players here. It's the same people.
25 You have the township, the zoning board, the same

1 plaintiffs. Why create more work for the courts and
2 have another complaint filed? I think that would go
3 against judicial economy.

4 I'm a little concerned about the comment that
5 Mr. Gertner made about a town should have a right to
6 have a township line, because having been involved in
7 the Ocean Township yeshiva case, it reminds me of the
8 comments that the Ocean Township was making, you know,
9 keep Lakewood out. And when you say we need to have a
10 township line, I hear those same things in my mind.
11 It reminds me of that.

12 And we also under the state laws, we have
13 rules that you cannot zone your town without respect
14 to considering the towns around you. You can't create
15 a Chinese wall around your own town. I don't have the
16 cases off the top of my head, but there are definitely
17 case that use those exact words.

18 So, for instance, you certainly couldn't stop
19 a road just because you don't want people traversing
20 in and out. That violates people's right. It doesn't
21 make any sense for everybody to end everything at
22 their towns.

23 And then with regard to the issue that the
24 Board supports the township's position that your Honor
25 has already ruled with regard to the bias, when we

1 look at the R1 and we look at the gerrymandering, I
2 think we've alleged enough in the complaint something
3 suspect is going on in Jackson. This property was
4 originally zoned R3 as was the Jackson Township High
5 School, some of the other high schools. They're all
6 in the same zone and things were changed, and we're
7 wondering and I think we have a right to explore what
8 may or may not be going on in the township. And I
9 just respectfully request that we get an opportunity
10 to explore these issues. Thank you.

11 MS. CIPRIANI: That description talking about
12 things that people are saying that are troubling,
13 there's some things going on in the Township of
14 Jackson, Miss Jennings is going to use this case to
15 find out about that. That's not what this case is
16 about. The ordinances that are --

17 THE COURT: Well, under the -- I mean, in my
18 decision on the -- on the zoning issue I said there
19 wasn't in -- in making that -- that decision in that
20 isolated case, that there wasn't evidence of any bias.
21 And I don't think that there was in terms of making
22 that ruling in the context of a zoning application.
23 Right? But does that finding -- can that -- does that
24 finding -- it's not my intent to have the finding
25 spill over into the other claims that were preserved

1 specifically under this. I just wanted that to be
2 clear.

3 MS. CIPRIANI: Yeah. And as far as, I mean,
4 obviously that has no impact --

5 THE COURT: Because there may be other --
6 other indicia of -- of unconstitutional or illegal
7 intent that, you know, might -- might be present in
8 terms of either the development of the ordinance or --
9 or otherwise.

10 MS. CIPRIANI: Well, the -- the -- the thing
11 that is of interest in that is as I said, this
12 ordinance was developed in 2010 in response to the
13 master plan changes and this change of the zone from
14 R3, I mean, as your Honor hears a lot of cases out of
15 Jackson, there are a lot of zoning changes made at
16 that time and a lot of people who for a wide variety
17 of reasons, wish that their zone hadn't changed. That
18 is not evidence of anything other than the simple
19 master plan development.

20 The citations in Miss Jennings' brief to
21 comments that were made were either things that the
22 township had no control over, but as far as I can tell
23 all things took place in 2016. So the suggestion that
24 there's proof of gerrymandering or some sort of
25 improper intent in 2009, 2010, because somebody made a

1 comment in a newspaper in 2016, there is no relevance
2 and no connection between those things.

3 To the extent that that can ever be used for
4 proof of anything, it certainly can't be used for
5 proof of the township's motivation in altering its
6 master plan and doing ordinances to implement that
7 master plan seven years before.

8 THE COURT: Okay. Miss Jennings, anything
9 else you want to say?

10 MS. JENNINGS: No. Thank you, your Honor.

11 THE COURT: Okay. Anything else?

12 MR. GERTNER: Your Honor, just briefly just
13 to follow-up, that that's the argument with regard to
14 the -- to the bootstrapping. The fact is the argument
15 cited are -- are six years after the implementation of
16 that master plan, it was -- it was based on that that
17 the zoning board made its determination.

18 MS. CIPRIANI: And I'm sorry, your Honor,
19 just one more thing. And Miss Jennings had raised the
20 issue of how the town can say, well, it says public
21 schools in the NC ordinance. So how would that apply
22 to private schools? Because the law in N.J.S.A.
23 40:55D-66 specifically says that we can't make that
24 distinction.

25 THE COURT: You can't make a distinction

1 between public and private schools.

2 MS. CIPRIANI: So that's an unenforceable
3 distinction.

4 MS. JENNINGS: So they've admitted they've
5 adopted an ordinance that violates the law.

6 MS. CIPRIANI: We've admitted that there's
7 an -- that the ordinance on -- in the NC zone, it
8 could not be enforced to make a distinction between
9 public and private schools. The ordinance as it
10 stands has to be used to apply to public and private
11 schools.

12 MR. GERTNER: And, your Honor, on flipping
13 through it, if I may, on that point, there's other
14 sections in the code where the Board looked to and I
15 have it in my brief. I'm having trouble finding it
16 right now where based on the law and the sections of
17 the ordinance, it is -- it is clear, that everyone
18 understood that public and private schools would be --
19 were to be treated the same.

20 THE COURT: Okay. All right. Thank you.

21 I'm going to take this argument under
22 consideration and I'll let you know my decision in a
23 couple of days. Okay? Thank you.

24 MR. GERTNER: Yeah. We're probably going to
25 ask the same question.

1 MS. JENNINGS: Yeah. If we could have a
2 little bit of a case management conference?

3 THE COURT: Oh, sure.

4 MS. JENNINGS: Because you had -- okay.
5 Thank you.

6 THE COURT: I think I said yes to that. I
7 just have to --

8 MS. JENNINGS: Okay. Well, I guess we're not
9 going to have your decision, so that's a little --
10 'cause we did an amended case management order dated
11 November 4, 2016 and we had propounded discovery on
12 the defendant zoning board and we have yet to receive
13 any discovery which was due January 31st. I've asked
14 Sean several times, was he doing -- going to ask for
15 an extension, was he going to submit something? I
16 received nothing.

17 THE COURT: Okay.

18 MR. GERTNER: Your Honor, I could -- I need
19 another 30 days to get, if that would be possible. If
20 that's -- if that's okay with you.

21 MS. JENNINGS: Well, I'm not going to object
22 at this time. If you need the 30 days we'll allow --
23 do you really need 30 days? I mean, you've had them
24 for 60 days.

25 THE COURT: I'm going to make it 30 days

1 because it's obviously if I rule that you could amend
2 your complaint to join the township then I have to
3 afford some time for them to respond also.

4 MS. JENNINGS: Right.

5 THE COURT: They have your discovery request;
6 right?

7 MS. JENNINGS: Yes. You both have the
8 discovery request?

9 MS. CIPRIANI: I remember you E-mailed it to
10 me early on and I'm sure I could find it again.

11 MS. JENNINGS: Well, I was kind enough to
12 bring two extra copies with me.

13 THE COURT: Good for you.

14 MS. JENNINGS: So you both are being served
15 today.

16 MS. CIPRIANI: I'll be glad to hold that in
17 abeyance until I get the court's decision.

18 MR. GERTNER: Thank you. And I'll even say
19 thank you, so...

20 MS. JENNINGS: There you go.

21 MR. GERTNER: Thank you.

22 MS. CIPRIANI: See, we're so much nicer than
23 the last litigants.

24 THE COURT: Okay. So at this point in time,
25 30 days to respond to discovery.

1 MR. GERTNER: And, I guess, your Honor,
2 depending on -- and I'm saying, I'm mumbling through
3 asking a question and not making a point. So the
4 return date for --

5 MR. GREENE: There was a cross motion for
6 summary judgment.

7 MR. GERTNER: -- for summary judgment.
8 Should we set that now or should we wait to see what
9 your Honor rules with regard to the amendments?

10 THE COURT: I'll -- I'll address that in my
11 decision.

12 MR. GERTNER: Okay.

13 MR. GREENE: Thank you.

14 MR. GERTNER: Thank you, Judge.

15 THE COURT: Okay. Anything else? Any other
16 issues? All right.

17 MS. JENNINGS: I just think that obviously
18 once you make the decision we'll have the case
19 management conference 'cause now everything in your
20 order from November 4 --

21 THE COURT: Is stale.

22 MS. JENNINGS: -- is stale.

23 THE COURT: Okay.

24 MS. JENNINGS: Thank you, your Honor.

25 THE COURT: Thank you.

1 MR. GERTNER: Thank you, your Honor.

2 MS. CIPRIANI: Thank you.

3 (CourtSmart ends)

4 * * *

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6 C E R T I F I C A T I O N

7

8 I, COLLEEN M. VAUGHN, the assigned
9 transcriber, do hereby certify the foregoing
10 transcript of proceedings on CourtSmart is prepared in
11 full compliance with the current Transcript Format for
12 Judicial Proceedings and is a true and accurate
13 non-compressed transcript of the proceedings as
14 recorded.

15

16

17 /s/ COLLEEN M. VAUGHN, C.C.T. AOC No. 599

18

19 SHORE REPORTING SERVICE, P.C. February 22, 2017

20

Agency Name Date

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22

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24

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EXHIBIT B

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,
Plaintiff,
v.
TOWNSHIP OF JACKSON and
JACKSON PLANNING BOARD,
Defendants.

Civil Action No.

COMPLAINT

The United States of America, by its undersigned attorneys, files this Complaint and alleges:

Introduction

1. The United States brings this civil action against the Township of Jackson (“Jackson” or “Township”) and the Township of Jackson Planning Board (“Planning Board”) (collectively, the “Defendants”) under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc et seq. and the Fair Housing Act, 42 U.S.C. §§ 3601 et seq. (“FHA”) stemming from the Defendants’ enactment and application of zoning ordinances that intentionally target religious schools and housing associated with such schools so that it will be impossible or nearly impossible for religious schools, including religious boarding schools utilized by members of the Orthodox Jewish community (“Orthodox community”) to operate in the Township.

Nature of the Action

2. In 2017, the Township passed Ordinance 03-17 and Ordinance 04-17 (“2017 Ordinances”). Ordinance 03-17 removed public, private, and parochial¹ schools as a permitted use in a number of Jackson’s zoning districts.

3. Ordinance 03-17 and Ordinance 04-17 both expressly prohibit dormitories throughout Jackson, making it impossible for religious boarding schools to establish in the Township.

¹ For the purposes of the Complaint, the term “parochial schools” is interchangeable with the term “religious schools.”

4. These Ordinances were enacted against the backdrop of widespread animus toward the Orthodox community moving into Jackson and intentionally target the needs of the Orthodox community to establish religious schools and religious schools with associated dormitory housing within the Township.

5. As a result of the 2017 Ordinances, religious schools and religious schools with housing cannot establish in the Township.

6. The Defendants specifically violated RLUIPA by: (a) treating parochial schools on less than equal terms than nonreligious assemblies in enacting and in applying the 2017 Ordinances, 42 U.S.C. § 2000cc(b)(1); and (b) discriminating against the Orthodox community on the basis of religion or religious denomination by enacting and applying the 2017 Ordinances, 42 U.S.C. § 2000cc(b)(2).

7. The Defendants violated the FHA by intentionally discriminating against the Orthodox community in enacting and applying the 2017 Ordinances in an effort to make residential housing unavailable in the Township on the basis of religion, 42 U.S.C. § 3604(a).

Jurisdiction and Venue

8. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 2000cc-2(f), and 42 U.S.C. § 3614(a).

9. Pursuant to 42 U.S.C. § 2000cc-2(f), the United States is authorized to commence suit against a local government for injunctive or declaratory relief to enforce compliance with RLUIPA.

10. Pursuant to 42 U.S.C. § 3614(a), the United States is authorized to commence suit against a person or persons for preventative relief, damages, and civil penalties.

11. Venue is proper under 28 U.S.C. § 1391(b) because the actions giving rise to this action occurred in the District of New Jersey.

Parties

12. Defendant Jackson is a municipality in Ocean County, New Jersey.

13. Jackson occupies almost 100 square miles in Ocean County, including sections of the New Jersey Pine Barrens. Jackson is also the site of Six Flags Great Adventure & Safari Park, the second-largest theme park in the world, as well as Six Flags Hurricane Harbor, its companion water park.

14. According to the 2010 Census, Jackson has approximately 55,000 residents. Jewish residents make up approximately 4% of Jackson's population.

15. The area immediately surrounding Jackson has experienced a recent increase in the Orthodox Jewish population.

16. Jackson's municipal government consists of a Mayor elected to a four-year term and a five-member Township Council with members elected to four-year terms on a staggered basis.

17. Michael Reina is the current Mayor of Jackson, and has served as Mayor since December 2008.

18. Kenneth J. Bressi is a current member of the Township Council, and he has served on the Council since 2009. Mr. Bressi also has been the Township Council's appointee to the Township Planning Board since 2006, and has served on

various Planning and Land Use Boards and Zoning Boards at various times since 1988.

19. Barry Calogero is a former member of the Township Council. He served on the Council from 2012 through May 13, 2020.

20. Robert A. Nixon is a former member of the Township Council. He served on the Council from 2012 through November 26, 2019.

21. Ann Updegrave is a former member of the Township Council, and served on the Council from 2006 to December 31, 2018.

22. Scott Martin is a former member of the Township Council, and served on the Council from 2006 to December 31, 2018.

23. The Township has the authority to regulate and restrict the use of land and structures within its borders.

24. Defendant Planning Board consists of nine members and two alternates. The members must include the Mayor, at least one other Township Official, a member of the Environmental Commission, and citizens of Jackson appointed by the Mayor. It has responsibility for, among other things, managing the Township's Master Plan and planning objectives, administering subdivision and site plan review, and granting variances related to subdivision plats.

25. For purposes of RLUIPA, the Township and the Planning Board each constitute a "government." 42 U.S.C. §§ 2000cc-5(4)(A)(i), (ii).

26. Defendant Jackson is responsible for the acts and omissions of its agents and agencies, including the Planning Board.

Facts

The Orthodox Community in Jackson

27. Approximately 500 Orthodox Jewish families live in Jackson Township.
28. The Orthodox community in and around Jackson Township is composed of multiple local subgroups, each with its own leaders and varying interpretations of religious doctrine and law.
29. As a general rule, the Orthodox community believes that a central element of its religious exercise is to educate its children in Orthodox Jewish schools, where they can learn the traditions and beliefs of their faith.
30. For the Orthodox community, religious life includes a focus on religious education to ensure the future of its subgroup and local community. By attending religious schools, or yeshivas, the Orthodox community believes that young male students will receive training necessary to become active adult community members and religious leaders.
31. Members of the Orthodox community active in the Jackson area believe that yeshiva students must be removed from the distractions of secular life to concentrate on their studies in a community of religious practitioners and scholars and that they study day and night with a focus that can only be achieved by residing at the school.
32. Members of the Orthodox community active in the Jackson area require that yeshiva teachers closely supervise students' moral and spiritual development and believe that this can only be achieved in a full-time, residential environment.

33. There are currently no Orthodox Jewish religious schools in Jackson.
34. Without access to local yeshivas, members of the Jackson area's Orthodox community will be significantly inhibited in exercising their religious beliefs and unable to develop future community members and community leaders.

Jackson's Zoning Map and Zoning Districts

35. The Jackson zoning map enumerates 45 zoning districts: 28 districts outside the Pinelands Area and 17 within the Pinelands Area, much of which is in the southern portion of Jackson and is zoned as preservation area or military. A zoning map is included as Exhibit A to this Complaint.

36. The northern section of Jackson contains a large number of residential zones. According to the zoning map, residential zoning districts comprise the majority of the Township.

37. The zoning map shows a number of Public Facility and Education "planning districts" ("PFE districts"), which are adjacent to residential zones and contain most of the Township's schools. The Township's Zoning Code says nothing about PFE districts.

38. The Township's zoning map and Township's Zoning Code are "land use regulation[s]" under RLUIPA, 42 U.S.C. § 2000cc-5(5).

Jackson's Zoning for Schools Before 2017

39. Before 2017, the Township's Zoning Code allowed private, parochial (religious), and public schools as permitted by-right uses in a variety of zoning districts, including residential zones R-2, R-3, R-5, R-9, R-15, R-20; multi-family

zones classified as MF, and in all Planned Mixed Unit Residential Development (“PMURD”) zones.

40. Before 2017, the Township’s Zoning Code allowed public schools, but not private or parochial schools, in the LC (Limited Commercial) and NC (Neighborhood Commercial) zoning districts.

41. Before 2017, public schools, but not private or parochial schools, were allowed as permitted by-right uses in the PV (Pinelands Village), RD-1 (Rural Development), and RG-2 and RG-3 (Rural Growth) zones.

42. Before 2017, the Township had ten public schools, a vocational technical school, a private day school, and two parochial schools (Jesus Harvest Time Academy and St. Aloysius School).

43. St. Aloysius, which closed in June 2019, was located in the LC zone, and the other schools are located in either the PFE zone or the PV zone.

44. In June 2014, Jackson’s Zoning Board of Appeals (“ZBA”) rejected plans for an all-girls Orthodox Jewish high school. As a result of this action, the school sued Jackson in New Jersey state court alleging RLUIPA claims. See Oros Bais Yaakov High Sch. v. Twp. of Jackson & Jackson Twp. Zoning Bd. of Adjustment, No. OCN-L-2891-14 (N.J. Super. filed Oct. 15, 2014). That litigation is currently pending.

***Jackson’s Zoning for Schools After 2017:
Ordinance 03-17***

45. In 2017, the Township enacted Ordinance 03-17 which restricted where public and private schools, including parochial schools, could locate.

46. Ordinance 03-17 amended the Township Zoning Code to remove all schools, whether public or private, from the R-2, R-3, R-5, R-9, R-15, R-20, and MF zoning districts.

47. Ordinance 03-17 states that any use not “expressly permitted” in any zoning district is “expressly prohibited.”

48. As a result of Ordinance 03-17, the Township Zoning Code only allows private schools, including parochial schools, to locate in the PMURD zone.

49. The Township’s zoning maps shows that only one small PMURD zoning district exists in the Township.

50. Under Ordinance 03-17, public schools are still allowed as permitted by-right uses in the PV, RD-1, RG-2, RG-3, LC and NC zones.

51. The Township has not demonstrated, through statements in its codes, master plan, or elsewhere, that allowing private schools, including parochial schools, in the PV-RD-1, RG-2, RG-3, LC or NC zones would impair any zoning goals for the Township, that the presence of private schools in these districts would adversely impact any regulatory land use goals for those zoning districts, or that private schools, including parochial schools, would have zoning impacts such as traffic, parking, or noise that are different from or greater than the zoning impacts created by a public school.

52. Ordinances 03-17 and 04-17 are “land use regulation[s]” under RLUIPA, 42 U.S.C. § 2000cc-5(5).

Jackson's Zoning for Dormitories Before 2017

53. Before 2017, in the R-2, R-3, and R-5 zones, “other customary accessory uses, buildings and structures, which are clearly incidental to the principal use and building” were permitted as accessory uses.

54. Dormitories are customary uses, buildings and structures that are incidental to the principal use of a school.

55. Before 2017, Jackson contained dormitories associated with a Six Flags theme park. These dormitories currently are located in the Township’s CR (Commercial Residential) zone.

***Jackson's Zoning for Dormitories After 2017:
Ordinances 03-17 and 04-17***

56. Ordinance 03-17 broadly prohibited the establishment of dormitories in the Township and expressly banned them for religious or educational uses.

57. Ordinance 03-17 defines “dormitory” as “[a]ny building, or portion thereof, designed or converted to contain living quarters which are provided as residences or for overnight sleeping for individuals or groups, operated as an accessory use to a school, college, university, boarding school, convent, monastery, non-profit educational institution, religious order, or other.”

58. Ordinance 03-17 then broadly prohibits the establishment of dormitories throughout the Township in the “Prohibited Uses” section:

A. All uses not expressly permitted in any given district are expressly prohibited in such district. No structure or addition thereto shall be built, moved or remodeled and no land shall be used, occupied, reoccupied, designed or improved for use or occupancy except for a use that is expressly permitted within the zone.

B. The following shall be prohibited as principal or accessory uses or structures in all zoning districts within the Township of Jackson:

(1) Dormitories

59. At the same time the Township enacted Ordinance 03-17, it also enacted Ordinance 04-17, which repeats verbatim the language of Ordinance 03-17 concerning dormitories in Jackson.

60. On January 30, 2019, the Township Planning Board approved a general development plan and site plan for a large complex near Six Flags Theme Park called Adventure Crossing that includes associated housing for a medical research center focused on multiple sclerosis. According to the meeting minutes, approximately 60 “special needs” units located directly above the research facility were approved so that researchers can work close to the population they will serve.

61. The Planning Board did not apply the “dormitory ban” under Ordinances 03-17 or 04-17 to Adventure Crossing’s 60 special needs units.

62. On February 4, 2019, the Township Planning Board approved the general development plan proposed by Trophy Park, LLC, which is a multipurpose athletic complex with a commercial area to include restaurants, retail buildings and a hotel. The sports complex at the park will also feature “team suites” for visiting sports teams that would serve up to 1,800 children a week during the summer.

63. The team suites will serve as overnight sleeping quarters operating as an accessory to the sports complex. The team suites consist of 60 two-story buildings

with one team per floor and one single bed for each athlete, and a nearby dining hall where teams would eat according to a managed meal plan.

64. The Township Planning Board did not apply the “dormitory ban” under Ordinances 03-17 or 04-17 to Trophy Park’s team suites.

65. During the course of two meetings on December 3, 2018 and February 4, 2019, Planning Board members questioned whether the proposed team suites were prohibited dormitories under Ordinances 03-17 and 04-17. The Planning Board determined that the team suites were not dormitories on two grounds: (1) the suites would not be used for academic or religious purposes; and (2) an athlete’s stay at a team suite would be for less than 30 days.

66. Dormitories are “dwellings” as defined by the Fair Housing Act, 42 U.S.C. § 3602.

Jackson’s Zoning for Multi-Family Housing 2017 to Present

67. In June 2017, the Township enacted ordinances that established three multi-family affordable housing zoning districts: MF-AH-6, MF-AH-7, and MF-AH-8. MF-AH-6 permits multi-family housing for up to six units. MF-AH-7 and MF-AH-8 zones permit multi-family construction projects containing approximately 200 units.

68. The ordinances establishing the MF-AH-6, MF-AH-7, and MF-AH-8 added new zones to already-existing multi-family housing zoning districts.

69. The MF-AH-7 and MF-AH-8 zoning districts allow large-scale multi-family housing up to 400 total units that would have a similar if not greater zoning and land use impact on the Township than dormitories.

Animus Toward Orthodox Community and Discriminatory Motives Behind Ordinances 03-17 and 04-17

70. Jackson shares part of its eastern border with Lakewood, NJ. Since 2000, Lakewood's Orthodox Jewish population has grown greatly and members of the Orthodox community have moved into surrounding towns, including Jackson, bringing with them the community's culture and traditions, including dress, social rules, and religious requirements unique to it.

71. The relatively recent and rapid expansion of the Orthodox community into Jackson has resulted in tension between Orthodox and non-Orthodox residents.

72. Residents of Jackson, as well as other townships neighboring Lakewood, have expressed hostile views toward the Orthodox community and have expressed concerns that the Orthodox community will continue to increase and change the Township's culture.

73. Jackson officials have responded to the concerns expressed by non-Orthodox residents by making statements demonstrating that they are aware of and support residents' animus against the Orthodox community and by taking actions to adversely impact the ability of the Orthodox community to locate in the Township.

74. In August 2015, Township officials, in response to complaints that the Orthodox community from Lakewood was attempting to solicit Jackson residents to

sell their homes to Orthodox families, enacted Ordinance 18-15, known as the “No-Knock Ordinance,” that established a registry upon which residents could place their names to restrict solicitors from canvassing directly at their homes.

75. In October 2015, then-Jackson Mayor Michael Reina, at a “Meet the Mayor” event urged residents not to sell their properties in order to preserve the character of the Township.

76. The No-Knock Ordinance was adopted in response to citizen complaints received by the Township, which included complaints about Orthodox Jews asking individuals to sell their homes.

77. In 2016, Jackson’s Division of Code Enforcement, under the leadership of then-Council President Nixon, began investigating whether Orthodox community members were violating the Township Zoning Code’s capacity and place-of-worship provisions by holding prayer group meetings on Friday nights in residential homes.

78. The level of resources the Division of Code Enforcement was expending on these investigations led Jackson’s Business Administrator, Helene Schlegel, to write Mayor Reina and Council President Nixon to complain about the “valuable time and money checking every complaint that comes in” at the expense of “the other issues [that] are life threatening and safety issues that are affecting many of Jackson’s youth and families” and stating that “we have to address all the issues in the Township, not just this issue.”

79. Mayor Reina stated that he was aware of anti-Orthodox sentiment in the Township and received emails and comments from individuals that were anti-Semitic and who expressed hostility to the Orthodox community.

80. Opposition from non-Orthodox residents to the increased presence of the Orthodox community in Jackson has led a number of social media groups to express animus and hostility toward the local Orthodox community and the growth of the Orthodox population in Jackson.

81. These social media groups regularly post or have posted information about Jackson's Townships Council, ZBA, and Planning Board meetings and encourage residents to contact Township officials to express their views on these issues before, during, and after the enactment of the 2017 Ordinances.

82. Members of the Township Council actively followed these social media sites and were influenced by them and took official action in response to them.

***Jackson Targets the Orthodox Community
Through Ordinances 03-17 and 04-17***

83. The 2017 Ordinances were enacted in response to the growth of the Orthodox community and the complaints Township officials received from residents about the Orthodox community.

84. Township officials introduced the 2017 Ordinances at the February 14, 2017 Council meeting without providing any justification behind the Ordinances and unanimously approved them.

85. On February 28, 2017, the scheduled second reading of the 2017 Ordinances was heavily attended and a number of residents made comments in

support of the Ordinances as a way to prevent the Orthodox community from further populating Jackson.

86. On March 6, 2017 Planning Board reviewed and unanimously recommended that the Ordinances be sent to the Township Council for a public hearing on second reading.

87. During the time period of the public meetings concerning the 2017 Ordinances, Jackson residents made comments on social media expressing support of the Ordinances as a way to prevent the Orthodox community from further populating Jackson.

88. On March 14, 2017, the Township Council held a second hearing and public hearing for the 2017 Ordinances that was attended by a standing-room-only crowd where many residents made comments to considerable applause expressing that Jackson needed the 2017 Ordinances to prevent the Orthodox community from further populating Jackson during the meeting.

89. All of the Councilmembers present at the meeting voted to pass the 2017 Ordinances.

90. Former-Councilmember Martin, who voted for the 2017 Ordinances, stated that he was concerned that what had happened in Lakewood, with the construction of schools with dorms, would happen in Jackson. He stated it was his assumption that most of the schools with dorms in Lakewood were built by the Orthodox Jewish community.

91. Councilmember Bressi stated that he and the Township Council were aware of Orthodox Jewish schools having dormitories because of the presence of such schools and dormitories in nearby towns, and that the motivation for the 2017 Ordinance was to keep Orthodox Jews from moving to Jackson.

92. Councilmember Bressi stated that former Councilmember Calogero told him that “The first dorm built in this town for them – I leave this town,” meaning by “them” Orthodox Jews.

93. Councilmember Bressi, who represents the Township Council on the Township Planning Board, and Mayor Reina, who sits on the Township Planning Board, both stated that they knew of no reason why a private school should not be allowed in a zoning district that allows a public school.

94. Orthodox families are significantly less likely to move to a location that does not provide religious educational opportunities for their children.

95. Defendant Jackson foresaw and knew the discriminatory impact of the 2017 Ordinances, which effectively ban both religious day schools and yeshivas in Jackson.

96. Agudath Israel of America, Inc. (“Agudath Israel”) and W.R. Property, LLC (“W.R.”) (collectively “Private Plaintiffs”) filed a separate action in 2017 alleging, in part, RLUIPA and Fair Housing Act violations stemming from the same events that form the basis of this Complaint. See Agudath Israel v. Jackson, No. 17-cv-3226 (D.N.J.) (MAS) (DEA).

97. A number of Jackson's Orthodox residents belong to Agudath Israel, a non-profit organization founded to unite a broad array of local Orthodox community members. Agudath Israel has a branch in New Jersey that advocates for the collective interests of Orthodox community.

98. Before passage of the 2017 Ordinances, W.R. purchased property in Jackson with the intent to construct an Orthodox religious school and identified multiple Orthodox groups interested in constructing one.

99. After Jackson passed the 2017 Ordinances and effectively prevented any religious school or dormitory from locating in Jackson, any application to construct a religious school and dormitory would be futile.

100. Agudath Israel believes that the Orthodox community in Jackson needs to have Orthodox religious schools to serve that population, including religious yeshivas with associated housing.

Anti-Orthodox Animus in Jackson by Township Officials and Residents Continues after Enactment of 2017 Ordinances

101. Hostility toward the Orthodox community by Township officials and residents in Jackson has continued since the enactments of Ordinances 03-17 and 04-17 to the present time.

102. Shortly after enacting Ordinances 03-17 and 04-17, the Township enacted Ordinance 20-17, prohibiting obstructions in rights of way. The Township enacted this ordinance in response to complaints by residents that the Orthodox community was seeking permits to construct an eruv, which are boundaries often

constructed of poles or wires and attached to utility poles. These boundaries designate an area where the Orthodox Jews can perform certain activities on the Sabbath, such as carrying infants and pushing wheelchairs.

103. Ordinance 20-17 prohibited the use of utility poles to construct an eruv, and Jackson has taken enforcement action against members of the Orthodox community, thereby restricting where members of the Orthodox community may go on the Sabbath and other holy days.

104. Mayor Reina signed Ordinance 20-17 into law. Councilmember Bressi stated that Mayor Reina told him, concerning an eruv in Jackson, that he would “never let them have wires in this town.”

105. Anti-Semitic incidents have occurred in Jackson since the passage of the 2017 Ordinances:

- a. In November 2017, a tracing of a swastika appeared in the playground sand at Jackson’s Woodland Park.
- b. In May 2019, a house scheduled for demolition in Jackson was defaced with anti-Semitic graffiti, including swastikas and the word “Hitler.”
- c. In September 2019, a Jackson resident was charged with harassment and bias intimidation after swerving his car at two Orthodox individuals, forcing them to jump on the curb for safety, while yelling obscenities and insults related to their Jewish religion.

106. The anti-Semitic hostility, and anti-Orthodox statements, continue on social media related to the movement of the Orthodox community into Jackson and nearby areas.

107. The Jackson NJ Strong Facebook group, which was available on Facebook until recently, was one of the social media groups with anti-Orthodox content. Jackson NJ Strong embraced and encouraged its members to join a newly established Ocean County chapter of Citizens United to Protect Our Neighborhoods (“CUPON”), a group purportedly against development and espousing anti-Semitic views. In August 2019, three Township officials, ZBA Chairman Sheldon Hofstein, ZBA member Joseph Sullivan, and Planning Board member Richard Egan resigned after reports and videos surfaced documenting their attendance at and participation in a CUPON meeting.

108. Rise Up Ocean County (“RUOC”) was started in 2018 and had a public Facebook page with over 14,000 followers as of August 2019 RUOC also maintained a second closed-group Facebook page. Facebook removed RUOC from its site recently, but the group still maintains an active website and other social media accounts.

109. RUOC’s internet platforms contain posts, commentary, and videos about growth issues in Ocean County that include derogatory statements and imagery about Orthodox Jews.

110. On April 8, 2020, another existing Facebook group became Take Back Jackson, NJ and describes itself as “Calling out all the BS that effects [sic] Jackson residents.” This group has approximately 430 members and remains active. It contains postings and comments similar to, and sometimes excerpted from, RUOC.

2020. The repeal of the Ordinances will not happen at least until there is a second reading.

117. At all times relevant, the Township did not have in place procedures to ensure Township officials were able to satisfy their obligations under RLUIPA or the FHA, including but not limited to, providing RLUIPA or FHA training to Township officials and staff involved in religious land use determinations, and establishing procedures to address complaints concerning denials of rights under RLUIPA or the FHA.

Count I: RLUIPA – Equal Terms

118. The allegations above are incorporated by reference.

119. The Defendants' enactment and application of the 2017 Ordinances and the Defendants' actions described in this Complaint constitute the imposition or implementation of a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

Count II: RLUIPA – Nondiscrimination

120. The allegations above are incorporated by reference.

121. The Defendants' enactment and application of the 2017 Ordinances and the Defendants' actions described in this Complaint constitute the imposition or implementation of a land use regulation that discriminates against any assembly or

111. In early 2019, after discussing settlement with the Private Plaintiffs (see paragraph 96, above) for several months, the Township drafted ordinances to counteract Ordinances 03-17 and 04-17. The Township never enacted the draft ordinances. Instead, the Township decided to engage new legal counsel and to move forward with defending against the Private Plaintiffs' lawsuit.

***United States' Notification of Suit Authorization
And Subsequent Township Action***

112. On February 3, 2020, the United States informed the Township that it was authorized to commence a lawsuit against the Township under RLUIPA and the FHA.

113. On May 12, 2020, the Township Council voted to repeal Ordinances 03-17 and 04-17.

114. Residents participating in that meeting opposed repealing Ordinances 03-17 and 04-17.

115. During that meeting, Township officials stated that Ordinances 03-17 and 04-17 were being repealed because they were "redundant," that dormitories would still not be permitted anywhere in the Township after the repeal of the ordinances (*i.e.*, under the Township's pre-amended 2017 Ordinance), and that schools with dormitories would still not be allowed.

116. The Township Council's vote to repeal Ordinances 03-17 and 04-17 is one step in a multi-step process to repeal them. A second reading by the Township Council, where the public will be invited to speak, is scheduled to occur on May 26,

institution on the basis of religion or religious denomination in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(2).

Count III: FHA

122. The allegations above are incorporated by reference.

123. The Defendants, through the conduct described in this Complaint, have discriminated in the sale or rental, or otherwise made unavailable or denied, dwellings to persons because of religion in violation of 42 U.S.C. § 3604(a).

124. The conduct of the Defendants described in the Complaint constitutes:

- a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619; and/or
- b. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, which raises an issue of general public importance.

125. Members of the Orthodox community seeking to reside in Jackson and attend or be close to yeshiva schools, and others, are “aggrieved persons,” as defined in 42 U.S.C. § 3602(i), and have suffered damages as a result of the Defendants’ conduct described above.

126. The Defendants’ conduct described above was intentional, willful, and taken in disregard for the rights of others.

Prayer for Relief

WHEREFORE, the United States prays that this Court enter an order that:

- A. Declares that the Defendants' policies and practices, as alleged herein, violate RLUIPA;
- B. Enjoins the Defendants, their officers, employees, agents, successors, and all other persons in concert or participation with them, from:
 - i. Treating the Orthodox community, and any other religious entities and institutions, and their members, on less than equal terms with nonreligious assemblies or institutions; and
 - ii. Discriminating against the Orthodox community, and any other religious entities and institutions, and their members, on the basis of religion or religious denomination;
- C. Requires the Defendants, their officers, employees, agents, successors, and all other persons in concert or participation with them, to:
 - i. Take such actions as may be necessary to prevent the recurrence of such unlawful conduct in the future, including, but not limited to:
 - 1. Ensuring that religious assemblies or institutions are not treated on less than equal terms with nonreligious assemblies or institutions;
 - 2. Providing RLUIPA training to its personnel;
 - 3. Establishing procedures to address complaints of RLUIPA violations; and
 - 4. Maintaining records and submitting reports relating to RLUIPA compliance;

- D. Declares that the Defendants' policies and practices, as alleged herein, violate the Fair Housing Act;
- E. Declares that the Defendants have engaged in a pattern or practice of discrimination in violation of the Fair Housing Act or have denied rights under the Fair Housing Act to a group of persons raising an issue of general public importance;
- F. Enjoins the Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from discriminating in the sale or rental, or otherwise making unavailable or denying dwellings to renters, because of religion in violation of 42 U.S.C. § 3604(a);
- G. Awards monetary damages under 42 U.S.C. § 3614(d) to aggrieved persons harmed by the Defendants' discriminatory policies and practices; and
- H. Awards such additional relief as the interests of justice may require,

together with the United States' costs and disbursements in this action.

Dated May 20, 2020

Respectfully submitted,

WILLIAM P. BARR
Attorney General

CRAIG CARPENITO
United States Attorney
District of New Jersey

ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division

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EXHIBIT C

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

United States of America
DEFENDANTS
 Township of Jackson, New Jersey and
 Jackson Planning Board

(b) County of Residence of First Listed Plaintiff _____
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant **Ocean**
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
 THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
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 970 Broad Street, Suite 700, Newark, NJ 07102 (973) 645-2700

Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
 (For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF	
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability PERSONAL PROPERTY <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation	LABOR <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 865 RSI (405(g))
			<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions

V. ORIGIN (Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. 2000cc et seq.; Fair Housing Act, 42 U.S.C. 3601 et seq.

VI. CAUSE OF ACTION

Brief description of cause: Unequal treatment of religious vs. non-religious entities in the enactment and application of land use laws as well as discrimination against the Orthodox Jewish community on the basis of religion.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
 (See instructions):

JUDGE The Honorable Michael A. Shipp

DOCKET NUMBER 17-cv-3226

DATE

SIGNATURE OF ATTORNEY OF RECORD

5/20/2020

/s/Kelly Horan Florio

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 - Original Proceedings. (1) Cases which originate in the United States district courts.
 - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 - Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.